

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

COMPLAINT

-against-

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A-1 JEWELRY & PAWN, INC.; ADVENTURE
OUTDOORS, INC.; COLE'S GUN SHOP, INC.,
DUNKELBERGER'S SPORTS OUTFITTERS,
GALLERY DISTRIBUTING INC.; GREG L. DRIGGERS
d/b/a AAA Gun & Pawn Brokers; THE GUN STORE,
INC.; HAROLD W. BABCOCK, JR. d/b/a Webb's
Sporting Goods; JAMES THOMAS FARMER d/b/a Jim's
Guns and Whatever; MICKALIS PAWN SHOP, LLC;
NANCY DAILEY d/b/a Peddler's Post; OLD DOMINION
GUNS & TACKLE, INC.; PATRIOT SERVICES, INC.;
WELSH PAWN SHOP, INC. d/b/a Big Tom's Pawn Shop;
WOODROW C. HOLMAN III d/b/a Woody's Pawn Shop,

Defendants.

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Plaintiff, the City of New York (the "City"), by its attorneys, Michael A. Cardozo, Corporation Counsel of the City of New York, and Pillsbury Winthrop Shaw Pittman, LLP, for its complaint against defendants A-1 Jewelry & Pawn, Inc.; Adventure Outdoors, Inc.; Cole's Gun Shop, Inc.; Dunkelberger's Sports Outfitters; Gallery Distributing Inc., Greg L. Driggers d/b/a AAA Gun & Pawn Brokers; The Gun Store, Inc.; Harold W. Babcock, Jr. d/b/a Webb's Sporting Goods; James Thomas Farmer d/b/a Jim's Guns and Whatever; Mickalis Pawn Shop, LLC; Nancy Dailey d/b/a Peddler's Post; Old Dominion Guns & Tackle, Inc., Patriot Services, Inc.; Welsh Pawn Shop, Inc. d/b/a Big Tom's Pawn Shop and Woodrow C. Holman III d/b/a Woody's Pawn Shop (hereafter, when referred to collectively, "Defendants") alleges as follows:

Nature of the Action

1. This civil action seeks damages, abatement costs and injunctive relief to remedy the Defendants' creation of and contribution to a public nuisance existing in the City of New York. The City also seeks to recover damages proximately caused by the Defendants' negligence, negligent entrustment, and negligence *per se* in selling handguns to, and handguns destined for, persons not legally entitled to possess them.

2. Gun violence in New York City is a direct result of thousands of handguns in the possession of individuals for whom gun ownership is illegal by reason of their criminal history, mental infirmity, age and/or lack of a license. These individuals (referred to herein as "prohibited possessors") commonly obtain handguns directly or indirectly from federally-licensed gun dealers who abuse the public trust inherent in licensure by intentionally or negligently engaging in certain illegal sales practices, as described herein.

3. The very reason for forbidding prohibited persons from possessing guns is their known propensity to use them to commit crimes. By reason of that propensity, the enormous number of illegally possessed guns in the hands of prohibited persons unequivocally meets the definition of a common law public nuisance – a condition that is injurious to the property, health, safety and comfort of a considerable number of persons. The New York State legislature has in fact declared illegally possessed handguns to be a public nuisance.

4. Evidence of the nuisance takes the form of the near-daily stream of incidents in which City residents, City police officers and City visitors are shot dead or wounded by illegally-posessed handguns. Accordingly, illegally possessed handguns injure the property, health, safety and comfort of a considerable number of persons.

5. Upon information and belief, Defendant A-1 Jewelry & Pawn, Inc. ("A-1") sells or sold handguns at its storefront establishments in Augusta and Hephzibah, Georgia.

During the period from March 1994 through October 2001, at least 48 guns sold by A-1 were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by A-1 have been recovered in the City in as few as 2 days after their sale by A-1 in Georgia.

6. Upon information and belief, Defendant Adventure Outdoors, Inc. (“Adventure Outdoors”) sells or sold handguns at its storefront establishment in Smyrna, Georgia. During the period from March 1994 through October 2001, at least 21 guns sold by Adventure Outdoors were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. In the period 1996 through 2000, a total of 254 guns sold by Adventure Outdoors were recovered in connection with crimes, nationwide. Guns sold by Adventure Outdoors have been recovered in the City in as few as 113 days after sale by Adventure Outdoors in Georgia.

7. Upon information and belief, Defendant Cole’s Gun Shop, Inc. (“Cole’s”), sells or sold handguns from a store in South Boston, Virginia. During the period from March 1994 through October 2001, at least 32 guns sold by Cole’s were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Nearly half of the illegally-posessed guns sold by Cole’s were recovered from juveniles. Guns sold by Cole’s have been recovered in the City in as few as 3 months after their sale by Cole’s in Virginia.

8. Upon information and belief, Defendant Dunkelberger’s Sports Outfitters (“Dunkelberger’s”), sells or sold handguns from a store in Stroudsburg, Pennsylvania. During the period from March 1994 through December 2005, at least 94 guns sold by Dunkelberger’s were recovered in New York City, both in the hands of individuals with no lawful right to

possess a gun and in connection with a variety of violent crimes. Guns sold by Dunkelberger's have been recovered in the City in as few as three weeks after their sale by Dunkelberger's in Pennsylvania.

9. Upon information and belief, Defendant Gallery Distributing Inc. ("Gallery Distributing") sells or sold handguns at its storefront establishment in Mount Penn, Pennsylvania. During the period from March 1994 through October 2001, at least 24 guns sold by Gallery Distributing were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Gallery Distributing have been recovered in the City in as few as 4 days after their sale by Gallery Distributing in Pennsylvania.

10. Upon information and belief, Defendant Greg L. Driggers d/b/a AAA Gun & Pawn Brokers ("AAA Gun") sells or sold handguns at its storefront establishment in Hephzibah, Georgia. During the period from March 1994 through October 2001, at least 16 guns sold by AAA Gun were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by AAA Gun have been recovered in the City in as few as 107 days after sale by AAA Gun in Georgia.

11. Upon information and belief, Defendant The Gun Store, Inc. ("The Gun Store") sells or sold handguns from a store in Doraville, Georgia. During the period from March 1994 through December 2005, at least 126 guns sold by the Gun Store were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. In the period 1996 through 2000, a total of 646 guns sold by The Gun Store were recovered in connection with crimes, nationwide. Guns sold by The

Gun Store have been recovered in the City as soon as 4 days after their sale by The Gun Store in Georgia. Although one of the owners of the Gun Store lost his federal firearms license after being convicted of a felony, the store has continued in business under the license of another owner, with no diminution in the number of guns recovered in the City.

12. Upon information and belief, Defendant Harold W. Babcock, Jr. d/b/a Webb's Sporting Goods ("Webb's") sells or sold handguns at its storefront establishment in Madison Heights, Virginia. During the period from March 1994 through October 2001, at least 15 guns sold by Webb's were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Webb's have been recovered in the City in as few as 64 days after sale by Webb's in Virginia.

13. Upon information and belief, Defendant James Thomas Farmer d/b/a Jim's Guns and Whatever ("Jim's Guns") sells or sold handguns from a store in Dayton, Ohio. During the period from March 1994 through October 2001, at least 25 guns sold by Jim's Guns were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Jim's Guns have been recovered in the City as soon as 1 day after their sale by Jim's Guns in Ohio. Indeed, all but 3 of the 25 guns known to be sold by Jim's Guns were recovered in New York City 17 or fewer days after sale. Jim's Guns has had its federal firearms license revoked by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), but continues to sell guns while the matter is on appeal.

14. Upon information and belief, Defendant Mickalis Pawn Shop, LLC ("Mickalis Pawn") sells or sold handguns from a store in Summerville, South Carolina. During the period from March 1994 through October 2001, at least 49 guns sold by Mickalis Pawn were

recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Mickalis Pawn have been recovered in New York City as soon as several weeks after their sale by Mickalis Pawn in South Carolina.

15. Upon information and belief, Defendant Nancy Dailey d/b/a Peddler's Post ("Peddler's Post") sells or sold handguns at a storefront establishment in Washington Court House, Ohio, and from a stand at a flea market in Wilmington, Ohio. Over several years, Peddler's Post has been implicated in a number of gun trafficking operations involving dozens of guns recovered in New York City. Additionally, during the period from March 1994 through October 2001, at least 9 guns sold by Peddler's Post were either recovered in or trafficked to New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Peddler's Post have been recovered in the City in as few as 156 days after their sale by Peddler's Post in Ohio.

16. Upon information and belief, Defendant Old Dominion Guns & Tackle, Inc. ("Old Dominion") sells or sold handguns at a storefront establishment in Danville, Virginia. During the period from March 1994 through October 2001, at least 15 guns sold by Old Dominion were recovered in New York City, both in the hands individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Old Dominion have been recovered in the City as soon as 1 month after their sale by Old Dominion in Virginia.

17. Upon information and belief, Defendant Patriot Services, Inc. ("Patriot Services") is a "kitchen table dealer" that sells or sold handguns out of a private home in Richmond, Virginia, and at gun shows around the state. During the period from March 1994 through December 2005, at least 50 guns sold by Patriot Services were recovered in New York

City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. In the period 1996 through 2000, a total of 210 guns sold by Patriot Services were recovered in connection with crimes, nationwide. Guns sold by Patriot Services have been recovered in the City in as few as 66 days after their sale by Patriot Services in Virginia.

18. Upon information and belief, Defendant Welsh Pawn Shop, Inc. d/b/a Big Tom's Pawn ("Big Tom's") sells or sold handguns at its storefront establishment in Savannah, Georgia. During the period from March 1994 through October 2001, at least 27 guns sold by Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Big Tom's have been recovered in the City in as few as 30 days after sale by Big Tom's in Georgia.

19. Upon information and belief, Defendant Woodrow C. Holman III d/b/a Woody's Pawn Shop ("Woody's Pawn") sells or sold handguns from a store in Orangeburg, South Carolina. During the period from March 1994 through October 2001, at least 98 guns sold by Woody's Pawn were recovered in New York City, both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes. Guns sold by Woody's Pawn have been recovered in the City in as few as 3 days after their sale by Woody's Pawn in South Carolina.

20. Upon information and belief, the ATF is in possession of additional evidence demonstrating that guns sold by the Defendants were recovered both in the hands of individuals with no lawful right to possess a gun and in connection with a variety of violent crimes in New York City between November 2001 and May 2006. ATF has taken the position

that recent legislation forbids it from providing this information to the City for the purposes of this lawsuit.

21. Guns sold by the Defendants are recovered from prohibited persons in New York City in numbers that far exceed recoveries for other comparably-situated retail gun dealers. Guns sold by the Defendants are recovered in the hands of prohibited persons in disproportionate numbers because each Defendant sells handguns in a manner that either intentionally violates federal law or is contrary to stated industry practice or otherwise and therefore negligent. Specifically, upon information and belief, Defendants intentionally or negligently sell handguns to prohibited persons through “strawman” purchases, in which an individual legally able to buy a handgun purchases the gun from a licensed gun dealer, intending to transfer it immediately to a prohibited person.

22. Defendants know or should know that the handguns they sell in strawman purchases are transferred rapidly to prohibited persons. Defendants know or should know that they could readily reduce the number of guns transferred to prohibited persons by refusing to engage in straw sales. Yet, upon information and belief, Defendants have failed, and still fail, to take the steps necessary to avoid selling handguns in straw sales.

23. ATF has established that a very small percentage of retail gun dealers – about 1% – are responsible for approximately 57% of the illegally-posessed guns nationwide. The Defendants are among this small group of gun dealers who arm illegal gun possessors. As such, the Defendants cause, contribute to and maintain a public nuisance within the City of New York.

24. The City seeks injunctive relief directing Defendants to cease selling handguns in strawman purchases. The City also seeks to recover its past and future costs of

abating the nuisance as well as compensatory damages proximately caused by Defendants' creation and maintenance of a nuisance, negligence, negligent entrustment, and negligence *per se*, together with punitive damages intended to deter these and other handgun dealers from engaging in these unlawful practices.

Jurisdiction and Venue

25. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the action is between citizens of different States.

26. This Court has personal jurisdiction over Defendants pursuant to N.Y. CPLR § 302(a)(3), in that each Defendant has committed a series of tortious acts outside of the State that have caused injury within the State and each Defendant derives substantial revenue from interstate commerce and/or from goods used in New York.

27. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to this claim occurred in this district.

The Parties

28. Plaintiff The City of New York is a municipal corporation existing by and under the laws of the State of New York.

29. Upon information and belief, Defendant A-1 Jewelry & Pawn, Inc. is a corporation formed under the laws of the State of Georgia, with places of business located at 3036 Deans Bridge Road, Augusta, Georgia 30906 and 1243 Gordon Highway, Augusta, Georgia 30901.

30. Upon information and belief, Defendant Adventure Outdoors, Inc. is a corporation formed under the laws of the State of Georgia, with a principal place of business located at 2295 South Cobb Drive, Smyrna, Georgia 30080.

31. Upon information and belief, Defendant Cole's Gun Shop, Inc. is a corporation formed under the laws of the Commonwealth of Virginia, with a principal place of business located at 204 Broad Street, South Boston, Virginia 24592.

32. Upon information and belief, Defendant Dunkelberger's Sports Outfitters is a business entity located at 585 Main Street in Stroudsburg, Pennsylvania 18360.

33. Upon information and belief, Defendant Gallery Distributing Inc. is a corporation formed under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 2807 Perkiomen Avenue, Mount Penn, Pennsylvania 19606.

34. Upon information and belief, Defendant Greg L. Driggers d/b/a AAA Gun & Pawn Brokers is a resident of the State of Georgia, with a principal place of business located at 2760 Tobacco Road, Hephzibah, Georgia 30815.

35. Upon information and belief, Defendant The Gun Store, Inc. is a corporation formed under the laws of the State of Georgia, with a principal place of business located at 5093 Buford Highway N.E., Doraville, Georgia 30340.

36. Upon information and belief, Defendant Harold W. Babcock, Jr. d/b/a Webb's Sporting Goods is a resident of the Commonwealth of Virginia, with a principal place of business located at 5341 South Amherst Highway, Madison Heights, Virginia 24572.

37. Upon information and belief, Defendant James Thomas Farmer d/b/a Jim's Guns and Whatever is a resident of the State of Ohio, with a principal place of business located at 1148 Richfield Center Road, Dayton, Ohio 45430.

38. Upon information and belief, Defendant Mickalis Pawn Shop, LLC is a South Carolina limited liability company with a principal place of business located at 1024 N. Main Street, Summerville, South Carolina 29483.

39. Upon information and belief, Defendant Nancy Dailey d/b/a Peddler's Post, is a resident of Ohio with a principal place of business located at 219 Draper Street in Washington Court House, Ohio 43160.

40. Upon information and belief, Defendant Old Dominion Guns & Tackle, Inc. is a corporation formed under the laws of the Commonwealth of Virginia, with a principal place of business located at 7608 Martinsville Highway in Danville, Virginia 24541.

41. Upon information and belief, Defendant Patriot Services, Inc. is a corporation formed under the laws of the Commonwealth of Virginia, with a principal place of business located at 8949 Brucewood Drive, Richmond, Virginia 23235.

42. Upon information and belief, Defendant Welsh Pawn Shop, Inc. d/b/a Big Tom's Pawn Shop is a corporation formed under the laws of the State of Georgia, with a principal place of business located at 5511 Montgomery Street, Savannah, Georgia 31405. Upon information and belief, in or about 1996, Welsh Pawn Shop, Inc. acquired Big Tom's Pawn from Big Tom's Pawn, Inc. Big Tom's Pawn, Inc. was a Georgia corporation formed in or about 1985 and held an FFL license. Welsh Pawn Shop, Inc. operates at least five pawn shops in the Savannah area with separate FFL licenses.

43. Upon information and belief, Defendant Woodrow C. Holman III d/b/a Woody's Pawn Shop is a resident of the State of South Carolina, with a principal place of business located at 898 Russell Street in Orangeburg, South Carolina 29115.

Facts

Handgun Violence in the City of New York

44. New York City strictly limits the people permitted to possess handguns within the City, and the City has enacted comprehensive gun laws intended, *inter alia*, to keep guns out of the hands of juveniles and criminals. Among other things, the City prohibits the

possession of firearms without a license and prohibits possession of firearms by felons, those with mental disorders, and anyone under the age of 21; requires licensees to obtain prior written authorization from NYPD before purchasing guns or purchasing more than one gun; and requires an owner to give notice to the Police Department when selling a gun. 38 RCNY §3-01 to 38 RCNY § 5- 33.

45. Notwithstanding the City's extensive efforts, persons in New York City prohibited by law from owning handguns and persons without the requisite New York City license easily obtain handguns illegally, despite prices that are often two to three times the price charged in a legal gun purchase.

46. During the 11 year period from 1995 to 2005, NYPD's ballistics analysis unit processed more than 70,000 handguns that had been recovered by NYPD or other law enforcement agencies, 5500 in 2005 alone. Virtually all of the firearms recovered in this 10 year period were recovered from individuals who were prohibited by law from possessing guns.

47. Firearms are by far the preferred method of homicide in New York City, and are used in approximately 60% of the homicides committed each year. Over the ten-year period from 1995 to 2004, approximately 5,400 people died in New York City as a result of gun violence in New York City. Virtually all of the firearms involved in these homicides were illegally-posessed.

48. Although the NYPD does not keep separate statistics to measure the use of guns in particular types of violent crimes, such as rape, robbery and aggravated assault, of the 792,000 of those crimes between 1995 and 2004, tens of thousands involved the use of handguns. Virtually all of those firearms were illegally-posessed.

49. Statistics do not fully convey the effect of illegally-posessed guns on the health and safety of the City's residents and its visitors. A single City newspaper, the *New York Post*, reported the following gun-related incidents for the five days between April 1 and April 5, 2006:

- “Police nabbed the man who gunned down two people, including one fatally, on a Hunts Point street. Malik Bryson, 21, was arrested at 11:15 a.m. Thursday on charges he shot Jessica Calzado, 17, to death and injured a 25-year-old man on Southern Boulevard at 11:57 p.m. on Feb. 17, police sources said yesterday.”

NYPD Daily Blotter *The New York Post* April 1, 2006.

- “Cops have bagged a suspect responsible for robbing three Dunkin’ Donuts in the past month, including one Tremont store he hit twice in the same day. ... [The suspect] produced a silver handgun and again fled with a sum of money.”

Id., April 2, 2006.

- “Police yesterday identified a young man who was shot dead in a Canarsie housing project over the weekend. He was Roshawn Washington, 21, of Linden Boulevard in Brooklyn, who was shot three times outside the Brookline Houses on Farragut Road at 9:27 p.m. Saturday, police said.”

Id., April 3, 2006.

- “A shooting victim who changed his story four times about how he had been shot has now been charged himself, authorities said. ... At about 1:30 p.m. that day, Hodges walked into Jamaica Hospital with a gunshot wound to the leg.”

Id., April 3, 2006.

- “Two men were shot in a botched robbery attempt in High Bridge, police sources said yesterday. The victims, ages 27 and 24, were walking home from a corner bodega when they were accosted by three or four thieves in the lobby of a Sheridan Avenue building at 4:30 a.m. on Sunday, sources said. The thugs tried to rob the duo and shot them each in their right legs when they resisted.”

Id., April 4, 2006.

- “Cops are searching for this man after an argument over a soccer game turned fatal at the weekend, police said yesterday. The suspect, Bledar Haxhia (above), 24, had exchanged angry words with Besnick Qelia, 27, who was on one of the teams, during the game on Saturday. After the match, Qelia first went to a friend’s house. When he left to go home, Haxhia accosted him on the street and allegedly shot him in the chest, cops said.”

Id., April 5, 2006.

- “A man was shot by an unidentified gunman on a Parkchester street, police sources said yesterday. The 26-year-old victim, whose name was not released, was struck on Archer Street near Beach Avenue at 12:43 a.m. Monday, sources said. The victim was rushed to Jacobi Hospital in stable condition with a gunshot wound to his left shoulder”

Id., April 5, 2006.

50. On Easter Sunday, April 16, 2006, David Pacheco Jr., a 2 1/2-year-old boy was shot and killed in the Bronx when a stray bullet penetrated his family’s minivan. The shot was fired from a 9 mm handgun following a street dispute at a nearby intersection. The pastor at the church holding David’s funeral service, “made a plea during the service to get guns off the streets of New York to prevent more children from dying. ‘God is sick and tired of our weapons. He’s sick and tired of our guns.’” Manny Fernandez, *et al.*, *Sad Farewell to Bronx 2-Year-Old Slain on Easter Sunday*, The New York Times (April 23, 2006).

51. NYPD police officers are the victims of shootings that arise out of criminal activity generally and out of criminal activity that is specifically tied to the supply of illegal guns. For example, two detectives assigned to NYPD’s Firearms Investigation Unit, James V. Nemorin and Rodney J. Andrews were shot and killed on March 10, 2003, during an undercover operation while attempting to purchase illegal firearms on Staten Island.

The Trafficking of Illegal Guns into New York City

52. NYPD firearms trafficking investigations reveal that many of the guns purchased on the street from gun traffickers are brand new. Undercover officers frequently are able to buy handguns in their original boxes, with manuals and accessories. The ability to buy new handguns illegally on the street indicates that the guns are being purchased from licensed gun dealers.

53. Upon information and belief, illegally-possessed handguns originate principally from retail purchases that take place outside of New York State. Few guns fall into the hands of prohibited persons as a result of theft from lawful owners. Only about 15% of the handguns recovered in the City had been previously reported stolen.

54. Upon information and belief, the principal indicator that a dealer is selling to prohibited persons is the number of guns sold by that dealer which are later recovered in connection with crimes. Some dealers sell hundreds of guns later recovered in crimes nationwide; others sell few or none. Recent research has shown that differences among dealers in the number of guns recovered from illegal possessors is not accounted for by the fact that some dealers merely sell more guns than others.

55. Another indicator widely used by ATF to identify retail dealers that serve as a source of illegally-possessed guns is the time between the retailer's sale of the gun and the gun's recovery in a crime. ATF has found that 43% of the guns used in crimes in urban centers across the United States were purchased from retail dealers less than three years prior to commission of the crime in which the gun was recovered. According to ATF, a relatively short interval between the retail sale of a gun and its recovery in a crime – known as “time to crime” – is an indication that the purchaser planned to transfer the gun to a prohibited person at the time of the purchase. Indeed, ATF's “Project Lead” assumes that a trafficking investigation may be

warranted when several guns purchased from the same dealer are recovered with a time to crime of less than 2 years.

Straw Purchases

56. Straw purchases are purchases by legal buyers who intend immediately to transfer the gun to a prohibited person, *i.e.*, an individual prohibited by state, local or federal law from possessing the gun. In one law enforcement study, more than 50% of the firearms subject to firearm trafficking investigations had been acquired in straw purchases. According to a United States Department of Justice publication:

Straw purchases are one of the most frequent methods used to divert firearms out of lawful commerce, where they are a heavily regulated commodity, and onto the street, where they are available to anyone. Convicted felons will simply use a friend, a family member or a girlfriend to buy a gun for them. *The felon provides the money for the gun, selects the gun, and directs the purchase. The straw purchaser just fills out all of the required paperwork, posing as the buyer.*

Firearms Trafficking 101 Or Where Do Crime Guns Come From? United States Attorneys Bulletin, January 2002 at 7 (emphasis added).

57. According to another United States Department of Justice publication:

The straw purchase serves as another method often employed by an illegal firearms trafficker who cannot legally purchase firearms. ... *A common scenario entails the firearm trafficker accompanying the straw purchaser into the firearms store to pay for the purchase while the straw purchaser completes the paperwork. Store video surveillance can verify this type of purchase.*

Joseph P. Greco, *Firearms Trafficking Enforcement Techniques*, The FBI Law Enforcement Bulletin, v. 69, n.9 (1968) (emphasis added).

58. Gun retailers are well aware through law enforcement and industry publications of the existence of straw purchases and the characteristic appearance of a straw

purchase. For example, an instructional pamphlet for gun dealers issued by a gun industry trade association provides:

STRAWMAN PURCHASES Section 12(a) of Form 4473 makes it clear that by law, the individual filling out the ATF Form 4473 firearms transaction record must be purchasing the firearm for himself or herself or as a gift. That individual must be the one actually paying for the gun. It is illegal for an individual to have another person buy him or her a firearm. This is commonly known as a “strawman purchase.”

A strawman is sometimes used because the actual purchaser is prohibited from acquiring the firearm. Consult ATF Form 4473, Section 12 for a full disclosure of prohibitions for eligibility to purchase a firearm.

IF THE PURCHASER ACTS SUSPICIOUS

Example: The key is to engage the customer and ask enough questions to draw out information on their background and intentions. **If suspicions arise, it is more prudent to follow the precautionary principle of politely refusing the sale to protect yourself from the risk of contributing to a possible illegal transaction.** (original emphasis)

Example: Bill and Al go to a gun shop because Bill wants a shotgun for duck hunting. Bill picks out the gun and gives Al the money. Al fills out and signs the sales record and pays for the gun. The gun dealer knows the gun is really for Bill, but he knows that neither one is a criminal. He lets the deal go down. All three have broken the law.

It does not matter if both the straw purchaser and the actual buyer can legally acquire firearms. By falsely claiming on the federal form who the actual buyer is, both parties commit a federal felony. **The dealer violates the law as well if aware of the false statements on the form.** (emphasis added)

Example: Bob brings his girlfriend Kay to a gun shop. Bob points out a pistol to Kay, who asks to see it. She briefly looks at the pistol and hands it to Bob who nods his approval and hands the pistol back to Kay. Kay then fills out the Form 4473 to purchase the pistol.

Observing this, you have reason to believe that Kay may not be the actual purchaser, Bob may simply be helping Kay select her first

handgun or, he may be ineligible to purchase a firearm and is using her as a strawman purchaser.

National Shooting Sports Foundation, *Don't Lie for the Other Guy: A Retailers Guide to Recognizing and Deterring Straw Purchases* ("Don't Lie for the Other Guy").

59. According to a videotape presentation by an ATF agent, retailers are instructed that they can prevent straw purchases, and the consequent diversion of firearms into the illegal market, by adhering to an important principle: if one person fills out the paperwork to purchase a firearm, that same person should pay for the firearm. National Shooting Sports Foundation videotape, *Identifying and Deterring Straw Purchasers*.

60. Thus, one explanation for the fact that "Dealer A's" guns are recovered from prohibited persons with greater frequency than "Dealer B" is that Dealer A participates, intentionally or negligently, in straw purchases.

61. Consistent with the fact that some dealers participate, whether intentionally or negligently in straw purchases is a recent study demonstrating that retail gun dealers appear to be in a position to control whether the guns they sell are subsequently recovered in criminal hands. Dealers whose intentional participation in illegal sales is exposed by undercover "stings" show a sharp reduction in the number of guns sold by them that are later recovered in crimes, as compared with sales made before the stings occurred. Even dealers in the same locality that are not the subject of a sting display a decline in the number of guns later recovered in crimes, confirming that dealers can voluntarily adopt methods to reduce the number of handguns falling into the hands of prohibited persons.

A-1 Jewelry & Pawn

A-1's Participation in Straw Sales

62. Upon information and belief, A-1 is well-acquainted with straw purchases, and has intentionally or negligently participated in such sales.

63. Between approximately August 1999 and June 2001, two members of a violent gang known to traffic in crack cocaine and prohibited from purchasing guns in Georgia used straw purchasers to acquire over 65 guns from two Augusta, Georgia-area gun dealers, one of which was A-1. Many of the guns were acquired as part of "multiple purchases," the purchase of several guns in one transaction. At least 10 of those guns were recovered in connection with crimes in Staten Island, New York, including assaults, shootings, narcotics offenses, and one homicide. The gang members pleaded guilty to the unlawful sale of firearms.

64. Between approximately April 1999 and April 2002, several people conspired to purchase over 70 handguns from A-1's stores in Augusta and Hephzibah, Georgia for purposes of trafficking them to New York City. In at least eight cases, the serial numbers on these handguns were obliterated. As part of that three-year operation, one person straw purchased a total of 39 guns from A-1. The straw purchases were made on 8 separate occasions. In each purchase, the straw purchaser bought several of the same cheap handguns. On one occasion, the straw purchaser bought 11 "Saturday night specials" – 6 Bryco 9mm pistols, and 5 Bryco .380 caliber pistols. On another occasion, the straw purchaser bought 8 handguns (6 Hi-Point .380 caliber pistols, and 2 Bryco 9mm pistols) at one time, from the same store as the 11 gun purchase.

65. As part of the same gun-trafficking operation, on or about April 8, 2002, a straw purchaser, Erich Olaf Tate, paid a \$2,000 cash deposit on an order of 34 handguns, which were to be trafficked to New York City. After the order for 34 handguns, A-1's owner, finally

finding it “obvious that [the straw purchaser] was buying more guns than he could use,” notified the ATF. *Dealer Admits Traffic In Guns Weapons Were Sold In New York*, Augusta Chronicle, October 24, 2002, p. B1.

66. In 2002, at a hearing to accept the trafficker’s guilty plea, Chief Judge Dudley H. Bowen, Jr. of the United States District Court for the Southern District of Georgia, upon learning of the eight previous multiple purchases made by Tate from A-1, “questioned why it took the sale of more than 30 guns to make employees suspicious,” especially when, as the trafficker confirmed, “an attentive clerk would have known what he was doing.” Judge Bowen vowed to recommend an investigation of A-1’s practices, commenting that “it sure does smell to me.” *Id.*

67. A-1 continues to be willing to engage in straw sales. On or about March 30, 2006, a male and a female investigator retained by the City of New York entered A-1’s Augusta, Georgia store and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with an A-1 salesperson, discussing and selecting the handgun to purchase. Once the male investigator had selected the gun and indicated a desire to purchase it, the female investigator, who had not been a part of the discussion, was summoned to the counter to make the purchase.

68. Up to the moment of filling out the required federal documentation, the female investigator was completely uninvolved in the purchase discussions and was off elsewhere, browsing in the store. The A-1 salesperson at the counter, who had shown the Beretta to the male investigator and answered questions about the gun, raised no objections and asked no

questions when the female investigator presented her identification and filled out the federal paperwork.

69. After the completion of the paperwork, the salesperson discussed the suitability of various ammunition with the male investigator, accepted cash payment for the firearm from the male investigator, and handed the firearm to the male investigator. Other than completing the federal paperwork, the female investigator did not participate in the transaction in any manner, nor did she express any interest in the handgun, its capabilities, or suitable ammunition.

70. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

71. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, A-1's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

72. Upon information and belief, A-1 continues to make straw sales and those handguns sold by A-1 continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

A-1's Contribution to the City Gun Nuisance

73. Despite its location approximately 800 miles from New York City, between March 1994 and October 2001, A-1 sold 42 guns recovered in the City. According to

court documents, A-1 has been the source of countless trafficked handguns, many of which have likely never been recovered.

74. Most of the guns sold by A-1 that have been recovered in New York City, were seized from illegal possessors. Many guns sold by A-1 had already been used in connection with serious crimes before they were recovered, including homicide and robbery.

75. Some of the reported incidents involving A-1 guns include the following:

- In April 2000, the death in the Bronx of a man as a result of two gunshots to the torso;
- In August 2001, the attempted murder of several uniformed police officers in Queens;
- In January 2000, an attempted drive-by murder, in which shots were fired at an individual by several perpetrators, including a 17-year-old boy, driving through the streets of Brooklyn;
- In December 1999, the carjacking and armed robbery in Brooklyn of a reporter during which a .38-caliber handgun was put to the back of the victim's head;
- In January 1998, the arrest of a 15-year-old boy in Brooklyn found to be in criminal possession of a handgun and over 4 ounces of crack cocaine;
- In February 1998, the arrest of a 16-year-old boy for firing a .38-caliber Lorcin into the air in Brooklyn; and
- In March 1998, October 1998 and September 1999, separate arrests of three 17-year-old boys found to be in criminal possession of .25-calibre Lorcins in Queens and Brooklyn.

76. Guns sold by A-1 were recovered in New York City as soon as 2 days after the sale. Seven guns sold by A-1 were recovered in New York City less than 2 weeks after their sale. The average time to crime for the 48 recovered guns traced from A-1 to New York City is 1.29 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

77. Some of the guns recovered in the City sold by A-1 had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

78. Virtually all of the handguns guns sold by A-1 and recovered in the City were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms, Hi-Points, and Lorcins.

AAA Gun

AAA Gun’s Participation in Straw Sales

79. Upon information and belief, AAA Gun is well-acquainted with straw purchases, and has intentionally or negligently participated in such sales.

80. Between approximately August 1999 and June 2001, two members of a violent gang known to traffic in crack cocaine and prohibited from purchasing guns in Georgia used straw purchasers to acquire over 65 guns from two Augusta, Georgia-area gun dealers, one of which was AAA Gun. Many of the guns were acquired as part of multiple purchases. At least 10 of the guns were recovered in connection with crimes in Staten Island, New York, including homicide, assaults, shootings and narcotics offenses. The gang members pleaded guilty to the unlawful sale of firearms.

81. AAA Gun continues to be willing to engage in straw sales. On or about April 20, 2006, a male and a female investigator retained by the City of New York entered AAA Guns in Hephzibah, Georgia and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with an AAA Gun salesperson, discussing and selecting a Hi Point 9mm handgun to purchase. Only after the male investigator decided on which gun to purchase was the female

investigator, who otherwise had not been part of the transaction, summoned to the counter to fill out the federal paperwork. The salesperson asked no questions of the female investigator, but simply accepted the paperwork from her. The male investigator gave cash for the gun to the salesperson.

82. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

83. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, AAA Gun's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

84. Upon information and belief, AAA Gun continues to make straw sales and those handguns sold by AAA Gun continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

AAA Gun's Contribution to the City Gun Nuisance

85. Despite its location nearly 800 miles from New York City, between March 1994 and October 2001, AAA Gun sold 16 guns recovered in the City.

86. Some of the reported incidents involving firearms sold by AAA Gun include the following:

- In June 2001, a man shot another man in the Bronx causing serious physical injury;
- In February 1998, a 16-year-old boy and two adults were found in possession of a defaced, loaded .380-caliber gun; and

- In incidents in August 1997 and November 2001, New York City men were arrested with bags of drugs and handguns.

87. Guns sold by AAA Gun were recovered in New York City as soon as 107 days after the sale. The average time to crime for the 16 recovered guns traced from AAA Gun to New York City is 3.2 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

88. Some of the guns recovered in the City sold by AAA Gun had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

89. Many of the handguns guns sold by AAA Gun and recovered in the City were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms, Davis, Lorcin and Hi-Points.

Adventure Outdoors

Adventure Outdoors’ Participation in Straw Sales

90. Upon information and belief, Adventure Outdoors has intentionally or negligently participated in straw sales.

91. On or about April 8, 2006, a male and a female investigator retained by the City of New York entered Adventure Outdoors’ Smyrna, Georgia store and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with an Adventure Outdoors salesperson in discussing and selecting a Glock 9mm handgun to purchase. Once the male investigator had the gun and indicated a desire to purchase it, the female investigator, who had not been a part of the discussion, was summoned to the counter to make the purchase.

92. The female investigator filled out the paperwork. When the male investigator attempted to pay for the gun, the salesperson said that the male investigator needed to initial the form because he was paying for the gun. The male investigator initialed the form, the salesperson performed the background check, and the transaction was completed.

93. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

94. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Adventure Outdoors' participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

95. Upon information and belief, Adventure Outdoors continues to make straw sales and those handguns sold by Adventure Outdoors continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Adventure Outdoors' Contribution to the City Gun Nuisance

96. A study by the Americans for Gun Safety Foundation ("AGSF") released in January 2004, *see Selling Crime: High Crime Gun Stores Fuel Criminals* (AGSF, January 2004), observes that data collected from 1996 to 2000 showed Adventure Outdoors ranked 82nd on the list of the 120 worst crime gun retailers in the nation. Adventure Outdoors had 254 reported guns recovered in connection with crimes nationwide for the period between 1996 and 2000.

97. Despite its location approximately 800 miles from New York City, between March 1994 and October 2001, Adventure Outdoors sold 21 guns recovered in the City. Most of the guns sold by Adventure Outdoors that have been recovered in New York City, were seized from illegal possessors. Many guns sold by A-1 had already been used in connection with serious crimes before they were recovered, including assault and robbery.

98. Some of the reported incidents involving Adventure Outdoors guns include the following:

- In March 1996, the injury of a man shot in the face in Manhattan by another man using a 9mm handgun;
- In April 1996, the robbery of a Manhattan store by two men, one of whom used a 9mm Jennings to threaten the store clerk and to pistol-whip him causing heavy bleeding to his face and head;
- In August 1998 in the Bronx, the arrest of a man who fled the police after threatening another man with a 9mm Bryco;
- In August 2001, the arrest of a man for firing a Glock handgun into the air in Queens; and
- In September 2001, following reports of at least four gun shots fired, police arrested a man following a traffic stop for possession of a loaded .380 Bryco handgun in Queens.

99. Guns sold by Adventure Outdoors were recovered in New York City as soon as 113 days after the sale. The average time to crime for the 21 recovered guns traced from Adventure Outdoors to New York City is 3.5 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

100. Some of the guns recovered in the City sold by Adventure Outdoors had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

101. Many of the handguns sold by Adventure Outdoors and recovered in the City were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms and Hi-Points.

Big Tom’s

Big Tom’s Participation in Straw Sales

102. Upon information and belief, Big Tom’s has intentionally or negligently participated in straw sales.

103. On or about April 20, 2006, a male and a female investigator retained by the City of New York entered Big Tom’s Savannah, Georgia store and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with a Big Tom’s salesperson, discussing and selecting a Glock 9mm handgun to purchase. Once the male investigator had the gun and indicated a desire to purchase it, the female investigator, who had not been a part of the discussion, was summoned to the counter to make the purchase. The salesperson did not ask any questions of the female investigator, but rather accepted the paperwork from the female investigator and the cash payment from the male investigator.

104. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

105. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Big Tom’s participation in the simulated straw sale violates

Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

106. Upon information and belief, Big Tom's continues to make straw sales and those handguns sold by Big Tom's continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Big Tom's Contribution to the City Gun Nuisance

107. Despite its location more than 800 miles from New York City, between March 1994 and October 2001, Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) sold 27 guns recovered in the City.

108. Some of the reported incidents involving firearms sold by Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) include the following:

- In December 1996, a 14-year-old was arrested in Queens for criminal possession of a 9mm TEC-9 pistol;
- In September 2000, a 17-year-old wanted for robbery was arrested in Brooklyn in possession of crack, a container of marijuana and a Lorcin .380-caliber pistol;
- In November 2000, a man was arrested in Manhattan after shooting someone with a 9mm Bryco handgun; and
- In October 2001, a 16 and 17-year-old were arrested in the Bronx for shooting into a crowd and hitting two men with two .380 semi-automatic handguns.

109. Guns sold by Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) were recovered in New York City as soon as 30 days after the sale. The average time to crime for the 16 guns recovered guns traced from Big Tom's Pawn Shop, Inc. to New York City is 5.3 years, and the average time to crime for the 11 guns recovered guns traced from Welsh Pawn Shop, Inc. to New York City is 1.4 years. This compares to an average time to crime of 6 years for all crime guns recovered in New York City.

110. Some of the guns recovered in the City sold by Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

111. Many of the handguns guns sold by Big Tom's (and its predecessor, Big Tom's Pawn Shop, Inc.) and recovered in the City were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Bryco Arms, Intratec, Lorcin and Hi-Point.

Cole's

Cole's Participates in Straw Sales

112. Upon information and belief, Cole's has intentionally or negligently engaged in straw sales.

113. On or about March 14, 2006, a male and a female investigator retained by the City of New York entered Cole's and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." The male investigator expressed interest in buying a 9mm handgun, while the female investigator wandered around the store. At one point, the clerk asked the female investigator if he could help her with something, and the male investigator responded – "she's with me; she's looking for something to buy."

114. The male investigator continued to talk to the clerk, discussing gun-related matters. The clerk, noting that a lot of people from North Carolina attempt to buy guns from him, asked the male investigator if he lived in Virginia, where the store was located. The male investigator then turned to the female investigator and asked "you live in the state, right?" When

it came time to buy the gun, the male investigator said, "I'm going to get her to do the paperwork here." The clerk responded, "OK." While the female investigator filled out the paperwork, she asked some questions about the forms. At one point, the clerk told her, with respect to one of the yes/no questions on the form, "that's the only one you answer 'yes' to."

115. The clerk discussed ammunition with the male investigator, who indicated he only wanted hollow point bullets, not bullets intended for target practice. The clerk and the male investigator discussed the number and size of magazines that came with the gun. The male investigator then paid cash for the gun and ammunition, along with some pepper spray and a spotting scope, while the female investigator stood to the side. At one point during the purchase, the male investigator asked whether the clerk had rung up a spotting scope chosen by the female investigator, and said "that's a big ticket item." The clerk responded, referring to the gun, "I think you're a little bigger."

116. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

117. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Cole's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

118. Upon information and belief, Cole's continues to make straw sales and those handguns sold by Cole's continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Cole's Contribution to the City Gun Nuisance

119. Despite its location nearly 450 miles from New York City, Cole's sold at least 32 guns recovered in New York City between March 1994 and October 2001.

120. Of the 32 guns sold by Cole's, most were seized from illegal possessors. Many guns sold by Cole's had already been used in connection with serious crimes before they were recovered, including robbery.

121. Cole's appears to specialize in the supply of illegal guns to the youth market – guns bought from Cole's were recovered in 26 crimes in New York City between 1996 and 2002. Of these, 11 incidents involved 13 individuals under the age of 18. Seven of the individuals were 15 years old or younger.

122. The reported incidents involving guns purchased at Cole's include the following:

- In April 1996, a group of men approached a victim in a Brooklyn street, hit him on the head, and threatened to kill him if he did not give them money. One of the perpetrators was in possession of a .25 semi-automatic;
- In April 1996, a 12-year-old brought a loaded Lorcin .380 semiautomatic to Intermediate School 27, the public school he attended on Staten Island;
- In March 1996, a 14-year-old was arrested in a Brooklyn residence for possession of a .380 semiautomatic;
- In January 1998, a 15-year-old was arrested on a street in the Bronx for possession of a Bryco;
- In February 1998, a 15-year-old from Staten Island was arrested in a Staten Island cab for possession of a Smith & Wesson .357 handgun. Three others, all age 20, were also arrested;
- In July 1998, a 14-year-old from Mt. Vernon, New York was arrested in the Bronx for possession of a .380 automatic and reckless endangerment. He and a 20-year-old Bronx resident had been discharging the gun into the air "numerous times";

- In May 1999, a 22-year-old and an 18-year-old, brandishing a Phoenix .22 handgun, chased a victim down a Brooklyn street following a verbal dispute. Before beginning their pursuit of the victim, the two displayed the gun and said “I’m gonna blow your face off”;
- In August 1999, a 16-year-old from Brooklyn was arrested in a Brooklyn residence for possession of a Lorcin .32 caliber gun. He was arrested along with 3 others, aged 42, 34, and 19;
- In October 1999, a 28-year-old man in Manhattan brandished a Lorcin .380 semiautomatic to threaten a 26-year-old woman who had come to his residence to serve him with child support papers. He pointed the loaded gun at her and said “If you do that, I’ll kill you”;
- In December 1999, a 15-year-old from Brooklyn was arrested on a street in Queens in possession of a Lorcin 9mm handgun and more than 2 ounces of marijuana;
- In December 2000, a 33-year-old from the Bronx was arrested while driving a stolen Hyundai Elantra; he was also found to be in possession of an Intratec 9mm Luger machine gun;
- In March 2001, a 16-year-old boy and a 17-year-old girl were arrested in a Bronx residence for possession of a Lorcin .380 gun;
- In August 2001, an 18-year-old and 17-year-old from Queens shot and killed a 16-year-old on a street in Queens;
- In October 2001, a 15-year-old boy was arrested on a street in Brooklyn for possession of a loaded .32-caliber automatic;
- In June 2002, two 16-year-olds were charged with gun possession for bringing a .22-caliber handgun and a .380-caliber automatic weapon to Tottenville High School on Staten Island.

123. The average time to crime for the 32 guns traced to New York City from Cole’s was 3.9 years, compared to a time to crime for all crime guns recovered in New York City of 6 years.

124. Some of the 32 guns recovered in the City that had been sold by Cole’s had their serial numbers defaced at the time they were recovered. ATF has reported that a

defaced or obliterated serial number is an indication that a gun may have been trafficked, illegally possessed or used in a crime.

125. The overwhelming majority of guns recovered in the City that had been sold by Cole's were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Bryco Arms, Davis Arms, Lorcins and Hi-Points.

Dunkelberger's Sports Outfitters

Dunkelberger's Participates in Straw Sales

126. Upon information and belief, Dunkelberger's has intentionally or negligently engaged in straw sales.

127. On or about April 18, 2006, a male and a female investigator retained by the City of New York entered Dunkelberger's and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." The male investigator expressed interest in buying a 9mm handgun, while the female investigator wandered around the store.

128. The male investigator approached the sales counter and a salesperson asked him if he needed help. The male investigator replied, "Yes, I would like to buy a handgun." The salesperson asked, "Do you know what you want?," and the investigator asked if they had any 9 mm handguns. The salesperson told the investigator that the guns he was then looking at were used handguns. The investigator asked if he had anything new. The salesperson then directed the investigator to a different part of the counter and the investigator asked to see a Glock, and was handed a Glock 19. The male investigator handled the gun. While he was looking at it, the salesperson handed him a Glock 23 with a 4-inch barrel. The investigator handed back the Glock 19 and took the Glock 23. The investigator held the gun as if positioning

to shoot. After familiarizing himself with the gun, he told the clerk that “this was the gun I want.”

129. The clerk said “OK” and returned with the paperwork. The clerk stated that he needed to see two photo I.D.s. It was only at this point that the female investigator, approached the counter and began to hand over her driver’s license. The male investigator then began to reach into his pocket and pull out money, holding it in his hands in an obvious manner. The clerk instructed the female investigator how to fill out the paperwork. At this point, the male investigator asked the clerk if he had any “hydro shock ammo.” The clerk said yes, and retrieved the ammunition, while still helping the female investigator with the paperwork. After providing copies of the paperwork to the female investigator, the clerk told the male investigator to follow him. The male investigator walked over to the cash register and the clerk began to ring up the items purchased. The clerk informed the male investigator of the total and the male investigator handed the clerk \$580 dollars in cash. The clerk then put the gun and the ammunition in a bag, and handed it to the male investigator, who walked out of the store.

130. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

131. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Dunkelberger’s participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City’s injury.

132. Upon information and belief, Dunkelberger's continues to make straw sales and those handguns sold by Dunkelberger's continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Dunkelberger's Contribution to the City Gun Nuisance

133. Despite its location nearly 75 miles from New York City, Dunkelberger's sold at least 94 guns recovered in New York City between March 1994 and December 2005.

134. Of the 94 guns sold by Dunkelberger's for which crime information is available, many were seized from illegal possessors. Others had already been used in connection with serious crimes before they were recovered, including robbery and drug related offenses.

135. The reported incidents involving Dunkelberger's guns include the following:

- In March 1996, a man robbed a grocery store in Brooklyn by holding up a miniature police badge and a .38-caliber handgun and telling the clerk, "I'm a cop";
- In August 1996, a 28-year-old man threatened his wife in their Brooklyn apartment with a loaded 9mm Ruger. He then hit her in the head with an iron and punched her in the eye;
- In March 1997, a 17-year-old was arrested in Queens with a loaded .380-caliber handgun and marijuana;
- In April 1998, a 16-year-old and 19-year-old were arrested on a street in Manhattan with a 9mm Ruger and marijuana;
- In May 1999, several men in their 20s, with four handguns, entered a shoe store at 1141 Broadway in Manhattan, tied up the employees, and stole \$2600 from them;
- In September 1999, two 19-year-olds fired shots from the roof of their Brooklyn apartment building with a .380-caliber handgun. They said they were testing it;
- In July 2000, a group of teens that included a 15-year-old, two 17-year-olds, two 18-year-olds and a 24-year-old were arrested in a Brooklyn apartment with a loaded Smith & Wesson .380; and

- In May 2000, a 32-year-old man who was fleeing police officers stole or attempted to steal a car from a man on a Brooklyn street by displaying a 9mm and a police badge.

136. Guns sold by Dunkelberger's have been recovered in New York City as soon as 3 and 4 weeks after sale. The average time to crime for 44 guns traced to New York City from Dunkelberger's between March 1994 and October 2001 was 3.9 years, compared to a time to crime for all crime guns recovered in New York City of 6 years.

137. Some of the guns recovered in the City that had been sold by Dunkelberger's had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

138. Many of the guns recovered in the City that had been sold by Dunkelberger's were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Bryco Arms, Davis Arms, Lorcins and Hi-Points.

Gallery Distributing

Gallery Distributing Participates in Straw Sales

139. Upon information and belief, Gallery Distributing is well-acquainted with straw purchases and continues to intentionally or negligently engage in straw sales.

140. Between March and July 2000, Kinatai Ellison purchased guns on behalf of a Philadelphia crack dealer, Luis Jose Arias, from Gallery Distributing on three occasions. Ellison was sentenced to 10 months in prison and three years parole.

141. In December 2005, a New York man, Tyrone Basnight, was charged for arranging six straw purchases at Gallery Distributing in May and June 2004. Basnight's criminal record involved five instances of possession of weapons and controlled substances in New York between 1986 and 2000.

142. On or about April 19, 2006, a male and a female investigator retained by the City of New York entered Gallery Distributing and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.”

143. The male investigator entered the store and began looking at the handguns. The salesperson behind the counter asked if he could help and the male investigator asked if they carried any 9mm handguns. The salesperson noted that the case in front of the investigator contained some 9mm handguns, at which point the investigator asked if they were new or used. The salesperson approached the counter and stated that the weapons without the yellow tags were new. The male investigator asked to see a Glock 9mm, and the salesperson handed him the gun. The male investigator held the gun in a shooting position and asked how many clips it came with. The male investigator said he would purchase the gun.

144. The employee asked the male investigator to step to the cash register, at which point he was joined by the female investigator, who had been wandering around the store. The salesperson asked for identification, and the female investigator pulled out her driver's license. At the same time, the male investigator pulled out money, and he held it in his hand. The salesperson asked the male investigator and the female investigator if they were married, and they replied that they were not. The salesperson asked who the gun was for and the female said it was for her. The salesperson acknowledged that and then asked the male investigator for \$20 cash to run the background check. The salesperson accepted the cash from the male investigator and continued to assist the female investigator with the paperwork. The male investigator then asked if the salesperson had ammunition, and asked specifically for a box of

“hydro-shocks.” The salesperson retrieved the weapon and a box of ammunition and set the weapon directly in front of the male investigator.

145. The salesperson placed the gun in the case in front of the male investigator and proceeded to total up the items, which he then provided to the male investigator. The male investigator handed him \$660 in cash. The employee then gave the change due and gave the male investigator instructions on how to take the gun apart. The employee asked if the male investigator had any questions.

146. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

147. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Gallery Distributing’s participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City’s injury.

148. Upon information and belief, Gallery Distributing continues to make straw sales and those handguns sold by Gallery Distributing continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Gallery Distributing’s Contribution to the City Gun Nuisance

149. Despite its location nearly 130 miles from New York City, Gallery Distributing sold at least 24 guns recovered in New York City between March 1994 and October 2001.

150. Of the 24 guns sold by Gallery Distributing recovered in New York City, most were recovered from illegal possessors before they could be used in violent crimes. One gun was recovered in a homicide and another in a robbery.

151. The reported incidents involving handguns sold by Gallery Distributing include the following:

- In November 1997, police arrested four men in the 67th Precinct in Brooklyn. The men had three handguns and five bags of marijuana, with them at the time of arrest;
- In March 1998, two men arrested in the 25th Precinct in Manhattan were found with five loaded and one unloaded firearms;
- In October 2000, four men, one of whom was 17, were arrested in the 10th Precinct in Manhattan and found with a loaded 9mm handgun;
- In April 2002, two men were arrested in the 30th precinct in Manhattan driving a stolen car. The police found cocaine in the car, as well as a stolen loaded .380-caliber handgun in the pocket of one of the suspects; and
- In April 2002, a 17-year-old was arrested in 40th Precinct in Bronx after firing a Smith & Wesson gun.

152. Guns sold by Gallery Distributing have been recovered in New York City as soon as 4 days after sale. The average time to crime for 24 guns traced to New York City from Gallery Distributing was 1.7 years, compared to a time to crime for all crime guns recovered in New York City of 6 years.

153. Some of the guns recovered in the City that had been sold by Gallery Distributing had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

154. Approximately half of the guns recovered in the City that had been sold by Gallery Distributing were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms, Davis Arms, Lorcins and Sundance Industries.

The Gun Store

Illegal Sales To Federal Agents

155. The Gun Store’s federal firearms license was initially held by Billy Lee, The Gun Store’s first owner. In 1995, Billy Lee and one of Lee’s employees were convicted of making an illegal sale to undercover federal agents. According to the February 1995 indictment, Lee “did knowingly aid, abet and counsel [the employee] in the unlawful transfer of a firearm.” Lee was found guilty in September 1995 and was released from prison in June 2000.

156. In connection with Billy Lee’s conviction, The Gun Store’s license was transferred from Billy Lee to Susan Lee. The Gun Store continued to operate from the same location at 5093 Buford Highway, N.E. in Doraville, Georgia.

The Gun Store Participates in Straw Sales

157. Upon information and belief, The Gun Store has intentionally or negligently engaged in straw sales and has long been acquainted with straw sales. In August 1993, an Atlanta man, Renwick Joseph Andrew, was charged with straw purchasing guns from several Atlanta area gun retailers, including The Gun Store, and reselling them to a New York City gang allegedly tied to suspects involved in the 1993 World Trade Center terrorist bombing and planned attack on the United Nations and other sites in New York City. The Atlanta man was part of a larger ring of gun traffickers, who allegedly sold 180 guns and four homemade bombs to ATF agents. Andrews straw purchased a .45-caliber Glock semiautomatic pistol and a 10mm semiautomatic pistol from The Gun Store.

158. On October 22, 1999, three men from New York City, Brenneis Alister Nesbitt, Dashan Adika Caines, and Ronald Junior King, straw purchased 11 inexpensive guns from The Gun Store. They returned to buy 18, 4 and 23 more guns on return trips made on November 23 and 27 and on December 2, 1999, respectively. The 56 guns were among the cheapest guns available, manufactured by Phoenix Arms, Lorcin, Bryco, Hi Point and Intratec. The trio of purchasers claimed to be buying these 56 guns for personal use.

159. In September and October 2000, Comeshia Ellison straw purchased a total of 31 handguns from The Gun Store on three separate occasions at the behest of her boyfriend, David Matthews, who accompanied her to the store and paid for the guns. Matthews, Ellison and their co-conspirators were later convicted of various firearms trafficking violations.

160. The Gun Store continues to be willing to engage in straw sales. On April 7, 2006, a male and a female investigator retained by the City of New York went into The Gun Store in Doraville, Georgia, and engaged in a simulated straw purchase, that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” The male investigator interacted with The Gun Store salesperson for several minutes, discussing and selecting a 9mm handgun to purchase. Up to the moment of filling out the required ATF documentation, the female investigator was completely uninvolved in the purchase discussions and was several feet away from the male investigator and the salesperson.

161. After the male investigator decided on the purchase, only then did the female approach the counter to participate in the transaction. The Gun Store salesperson at the counter, who had shown the gun to the male investigator and answered several of his questions about the gun, then produced the federal forms to be filled out by the buyer. When the female

investigator presented her identification as the buyer, The Gun Store salesperson asked, “Who’s the gun for?” The female investigator responded that it was for her. The salesperson accepted the representation without further inquiry despite the male investigator’s sole participation in the transaction.

162. When the female investigator presented identification without a current address, the salesperson instructed her to return with identification showing a current Georgia address. The male and female investigators returned later on the afternoon of April 7, but the store was closed.

163. The male and female investigators then returned on the morning of April 10, 2006 to complete the transaction. The male investigator stated to the same salesperson that he had returned to purchase the gun selected three days earlier. The salesperson, remembering the investigators, removed the same gun from the display case without prompting, and again inquired whether the gun was being purchased by the female investigator. The female investigator said that it was for her, and the salesperson gave her the federal paperwork to complete. The salesperson informed the female investigator that the price of the gun was \$556.39. In full view of the salesperson, the male investigator removed the money from his pocket and gave it to the female investigator, who in turn paid the salesperson. The salesperson then gave the change to the female investigator, who in turn gave it to the male investigator. The gun was placed in its carrying case and put in a plastic bag and handed to the female investigator.

164. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times by the same investigators, as an attempt to engage in a straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

165. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, The Gun Store's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

166. Upon information and belief, The Gun Store continues to make straw sales and those handguns sold by The Gun Store continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

The Gun Store's Contribution to the City Gun Nuisance

167. A study by the Americans for Gun Safety Foundation ("AGSF") released in January 2004, *see Selling Crime: High Crime Gun Stores Fuel Criminals* (AGSF, January 2004), observes that data collected from 1996 to 2000 showed The Gun Store to be near the top of a list of the 120 worst crime gun retailers in the nation, ranking 21st. The Gun Store had 646 reported traces nationwide for the period between 1996 and 2000.

168. Despite its location nearly 900 miles from New York City, between March 1994 and December 2005, The Gun Store sold at least 126 guns recovered in New York City. Most of the guns were seized from illegal possessors. Many guns sold by The Gun Store had already been used in connection with serious crimes before they were recovered, including homicide, assault, burglary, robbery and drug-based offenses.

169. Some of the reported incidents involving The Gun Store guns include the following:

- In December 2000, the recovery of a loaded gun used in a robbery at a Brooklyn grocery store;
- In November 1999, the recovery of a handgun used to shoot a 20-year-old livery cab driver in the legs;

- In July 2001, the recovery of a gun used to threaten a driver in a traffic dispute;
- In August 1999, the recovery of a 9mm pistol in the knapsack of a 16-year-old boy at a Manhattan public pool/playground;
- In April 1999, the recovery of a .38-caliber gun that had allegedly been fired five or six times in the rear of a Bronx building; and
- In June 1996, the arrest of a man and woman for possession of cocaine with intent to distribute, possession of a loaded 9mm handgun with intent to use, and child endangerment.

170. Guns sold by The Gun Store were recovered in crimes in New York City as soon as 4 days after sale. A total of 18 guns had times to crime of less than 200 days. The average time to crime for the 82 guns sold by The Gun Store and recovered in New York City during the period from March 1994 to October 2001 was 3.02 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

171. The serial numbers of some of the 82 guns sold by The Gun Store were defaced. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

172. Approximately 80% of The Gun Store guns recovered in the City were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms, Davis Arms, Lorcin and Hi-Point.

Jim’s Guns

Federal Firearms License Revocation

173. The federal firearms license of James Thomas Farmer, FFL number 4-31-113-01-4E-10084, the owner of Jim’s Guns, was revoked by ATF in August 2004 after a January 2004 inspection found numerous violations. Compliance inspections at the store in 1995, 1996, and 2001 had also shown violations. The revocation was confirmed by ATF’s Director of

Industry Operations, Columbus Field Division, effective June 2005. Upon information and belief, Farmer has appealed the revocation, however, and has sold and continues to sell guns while that appeal is pending.

Jim's Guns Participates in Straw Sales

174. Upon information and belief, Jim's Guns has negligently or intentionally engaged in straw sales and is well acquainted with straw sales. A December 11, 2000 *Dayton Daily News* article reported that Farmer admitted selling guns in 2000 to Alfred Dawson, a trafficker arrested on Staten Island, New York. Dawson was indicted for buying guns in Ohio and selling them in "East Coast cities." According to a December 10, 2000, *Dayton Daily News* article, Dawson bought 8 guns from Jim's Guns on two occasions, and he and his brother sold them a few days later to New York undercover agents.

175. Jim's Guns continues to be willing to engage in straw sales. On April 5, 2006, a male and a female investigator retained by the City New York went to Jim's Guns in Dayton, Ohio, and engaged in a simulated straw purchase, that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." The male investigator interacted with the salesperson at Jim's Guns, discussing and selecting a 9mm handgun to purchase. The male investigator looked at Smith & Wesson and Taurus handguns, and decided to purchase the Taurus. Up to the moment of filling out the required ATF documentation, the female investigator was completely uninvolved in the purchase discussions.

176. After the male investigator decided on the purchase, only then did the female approach the counter to participate in the transaction. The salesperson at the counter, who had shown the gun to the male investigator and answered several of his questions about the gun, then produced the federal paperwork to be filled out by the buyer. Referring to the

paperwork, the male investigator stated, “that’s going to be for her.” The salesperson did not ask any questions, but rather simply handed the paperwork to the female investigator.

177. The male investigator browsed in the store while the female investigator filled out the paperwork. The salesperson, addressing the male investigator, then asked, “Anything else?” The male investigator responded, “no.” The male investigator then paid for the gun in cash. The salesperson then asked if the male investigator wanted a bag. The male investigator said that he did want a bag, and the salesperson placed the gun in a bag and handed it to the female investigator, noting “since she signed for it”

178. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times by the same investigators, as an attempt to engage in a straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

179. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Jim’s Guns’ participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City’s injury.

180. Upon information and belief, Jim’s Guns continues to make straw sales and those handguns sold by Jim’s Guns continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Jim’s Guns’ Contribution to the City Gun Nuisance

181. Despite its location approximately 600 miles from New York City, between March 1994 and October 2001, Jim’s Guns sold 25 guns recovered in New York City. Most of the guns sold by Jim’s Guns that have been recovered in New York City, were seized

from illegal possessors. Many guns sold by Jim's Guns had already been used in connection with serious crimes before they were recovered.

182. The reported incidents involving guns purchased at Jim's Guns include the following:

- In November 1997, a 9mm gun was recovered at the corner of Lorraine Street and Henry Street in Brooklyn;
- In September 2000 in Queens, a 34-year-old man was driving a car involved in a shooting. As a police officer attempted to stop the suspect, he got out of the car and ran away. The police officer found a .380-caliber handgun in his car;
- In June 2001, a 19-year-old man and a 22-year-old man were arrested in Staten Island for pointing 9mm handguns at someone after a dispute in a store; and
- In June 2001, a 17-year-old man and an 18-year-old man in Staten Island were found in possession of a loaded .380-caliber semiautomatic pistol hidden in their car.

183. Guns sold by Jim's Guns were recovered in New York City as soon as 1 day after sale, and 21 guns were recovered in New York City less than 3 weeks after their sale in Ohio. The average time to crime for the 25 recovered guns traced from Jim's Guns' to New York City is about 4 months, compared to a 6 year time to crime for all crime guns recovered in New York City.

184. The serial numbers of many of the guns sold by Jim's Guns recovered in the City had been defaced. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

185. All 25 of the guns recovered in the City that had been purchased at Jim's Guns were "Saturday night specials" – cheap, poorly made handguns favored by criminals: including 24 Bryco Arms and 1 Hi-Point.

Mickalis Pawn

Mickalis Pawn Participates in Straw Sales

186. Upon information and belief, Mickalis Pawn has negligently or intentionally engaged in straw sales. On or about April 20, 2006, a male and a female investigator retained by the City of New York entered the Mickalis Pawn store in Summerville, South Carolina and engaged in a simulated straw purchase of a Hi-Point handgun, much like those described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with a Mickalis salesperson, discussing and selecting a Hi-Point handgun to purchase. When the salesperson asked the male investigator for his driver’s license, the male investigator summoned the female investigator to give hers, which she did. After the male investigator said that he would take the gun and four boxes of ammunition, the salesperson again asked the male investigator if he had his license. The male investigator indicated that he did not. The salesperson then said, “she’s going to have to do it then.” The male investigator responded, “That’s fine, she will do the paperwork.” The salesperson then handed the forms to the female investigator and, addressing the male investigator, said “She’s getting this for herself.” The male investigator responded, “Right.” The salesperson did not ask any questions of the female investigator, but rather accepted the paperwork and sold the gun. The male investigator paid for the gun.

187. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times by the same investigators, as an attempt to engage in a straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

188. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Mickalis Pawn’s participation in the simulated straw sale

violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

189. Upon information and belief, Mickalis Pawn continues to make straw sales and those handguns sold by Mickalis Pawn continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Mickalis Pawn 's Contribution to the City Gun Nuisance

190. Despite its location approximately 735 miles from New York City, Mickalis Pawn sold 49 guns recovered in New York City between March 1994 and October 2001. Most of the guns sold by Mickalis Pawn that have been recovered in New York City, were seized from illegal possessors. Many guns sold by Mickalis Pawn had already been used in connection with serious crimes before they were recovered, including assault, robbery and burglary.

191. The reported incidents involving guns purchased at Mickalis Pawn include the following:

- In June 1996, police arrested five suspects who were apparently burglarizing an apartment in Manhattan. The suspects had two loaded guns, an Uzi and a Glock 9mm;
- In June 1997, during a shooting in front of a shoe store in the Bronx, a bystander was hit by a bullet that went through a window;
- In April 1998, a man was arrested when he pulled out a loaded .380-caliber semi-automatic handgun during a verbal dispute in a Brooklyn apartment;
- In May 1998, men used a semi-automatic gun in a robbery of a grocery store in Brooklyn and fired it during a struggle. The gun was left behind when the suspects fled the scene;
- In October 1999, a victim in Brooklyn said that a man opened his car door and pointed a 9mm Lorcin at him. The suspect walked away when the victim said he had no money;

- In January 2001, a 12-year-old boy in Manhattan was playing with a semi-automatic handgun and accidentally shot someone in the chest; and
- In July 2001, a 24-year-old was arrested in a park in Brooklyn after he shot an 18-year-old in the upper thigh in a dispute over suspect's ex-girlfriend, who witnessed the shooting.

192. A gun sold by Mickalis Pawn was recovered in New York City as soon as 18 days after sale. The average time to crime for the 49 recovered guns traced from Mickalis Pawn to New York City is 3.7 years, compared to a time to crime for all crime guns recovered in New York City of 6 years. Seventeen of the 49 guns were recovered less than 2 years after being purchased from Mickalis Pawn, and in 5 of those cases, the guns were recovered less than 6 months after purchase.

193. Some of the guns recovered in the City sold by Mickalis Pawn had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

194. Approximately 70% of guns recovered in the City purchased at Mickalis Pawn were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Lorcins and Hi-Points.

Old Dominion

Old Dominion's Participation in Straw Sales

195. Upon information and belief, Old Dominion is well-acquainted with straw purchases, and has intentionally or negligently participated in such sales.

196. Upon information and belief, over an eighteen month period between approximately early 2002 and late 2003, Dr. Deborah Barr-Hairston straw purchased nine Hi-Point 9mm handguns from Old Dominion for her husband, a convicted felon and drug addict not lawfully entitled to possess firearms. According to an October 2005 U.S. Department of Justice

press release, an ATF agent conducting a routine investigation of Old Dominion in the fall of 2003 became suspicious when he noted records of the purchases. Upon investigation, it was discovered that Barr-Hairston straw purchased the handguns for her husband, who then traded them to drug dealers for crack cocaine. Ms. Barr-Hairston convicted during a jury trial, and her husband pleaded guilty to numerous counts relating to the unlawful purchase and sale, respectively, of the handguns purchased from Old Dominion.

197. Old Dominion continues to be willing to engage in straw sales. On or about March 15, 2006, two male investigators retained by the City of New York entered Old Dominion's Danville, Virginia store and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." Investigator "A" interacted exclusively with an Old Dominion salesperson, in discussing and selecting the handgun to purchase. Once Investigator "A" had selected the gun and indicated a desire to purchase it, Investigator "B," who had no participation in the purchase discussion, was summoned to the counter to fill out the federal paperwork.

198. Up to the moment of filling out the required federal documentation, Investigator "B" was completely uninvolved in the purchase discussions and was off elsewhere, browsing in the store. The Old Dominion salesperson at the counter, who had shown the Hi-Point to Investigator "A," and answered his questions about the gun, raised no objections and asked no questions when Investigator "B" presented identification and filled out the federal paperwork.

199. After the completion of the paperwork, the salesperson discussed the suitability of various types of ammunition – specifically, hollow-point bullets – with Investigator

“A,” accepted cash payment for the firearm from Investigator “A,” and handed the firearm and ammunition to him. Other than completing the federal paperwork, Investigator “B” did not participate in the transaction in any manner, nor did he express any interest in the handgun, its capabilities, or suitable ammunition.

200. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times by the same investigators, as an attempt to engage in a straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

201. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Old Dominion’s participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City’s injury.

202. Upon information and belief, Old Dominion continues to make straw sales and those handguns sold by Old Dominion continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Old Dominion’s Contribution to the City Gun Nuisance

203. Despite its location approximately 540 miles from New York City, between March 1994 and October 2001, Old Dominion sold 15 guns recovered in the City. According to press reports, Old Dominion was the source of at least 9 other trafficked handguns, many of which have likely never been recovered.

204. Most of the guns sold by Old Dominion that have been recovered in New York City, were seized from illegal possessors. Many guns sold by Old Dominion had already

been used in connection with serious crimes before they were recovered, including robbery and drug offenses.

205. Some of the reported incidents involving Old Dominion guns include the following:

- In November 1996, the robbery of a 19 year old man in a Manhattan apartment by two men using a .380-caliber handgun;
- In March 1998, multiple shots fired on the streets of Manhattan from a handgun, and recovery of a loaded Hi-Point 9mm pistol;
- In February 2000, the recovery of a loaded Taurus 9mm pistol and a large quantity of drugs, from a Staten Island apartment in which children lived, including a 12 year old boy; the arrest of 2 men and 2 women present in the apartment for child endangerment;
- In November 1997, the recovery of a 9mm Ruger and four other handguns from suspects, including a Danville, Virginia resident, in a parked vehicle on Brooklyn streets; and
- In August 1997, the recovery of a .38-caliber handgun, a .40-caliber Smith & Wesson, and drugs in a Staten Island home;

206. Guns sold by Old Dominion were recovered in New York City as quickly as 24 days after the sale. Four guns sold by Old Dominion were recovered in New York City less than 1 year after their sale. The average time to crime for the 15 recovered guns traced from Old Dominion to New York City is 3.0 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

207. Many of the handguns sold by Old Dominion and recovered in the City were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Bryco Arms, Hi-Points, and Lorcins.

Patriot Services

Patriot Services Participates in Straw Sales

208. Upon information and belief, Patriot Services has negligently or intentionally engaged in straw sales, some of which took place at gun shows.

209. On or about March 25, 2006, a male and a female investigator retained by the City of New York attended a gun show in Richmond, Virginia at which Patriot Services was selling firearms. The investigators engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the “straw purchaser.” Only the male investigator interacted with a Patriot Services salesperson, discussing and selecting a handgun to purchase. Once the male investigator selected a Smith & Wesson 9mm and indicated a desire to purchase the firearm, the female investigator who to that point was completely uninvolved in the transaction then approached the table to purchase the firearm selected by the male investigator.

210. The Patriot Services employee overseeing the completion of the federal paperwork, a different person than the salesperson who originally assisted the male investigator, appeared to be no more than 16 or 17 years old. When the investigators approached the table, the male investigator told the young clerk that they were there to purchase the Smith & Wesson 9mm. The young clerk asked whether both of them were buying it; the female investigator responded that she was buying it.

211. After the completion of the federal paperwork, the original salesperson again became involved in the transaction, returning the female investigator’s identification card to her while at the same time accepting payment for the firearm from the male investigator, and handing him the firearm and receipt.

212. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times by the same investigators, as an attempt to engage in a straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

213. Upon information and belief, Patriot Services' staffing practices and operational procedures at the gun show permitted the two customers to engage in what would have been apparent to any prudent retailer – and should have been apparent to Patriot Services – as a straw purchase. Specifically, Patriot Services compartmentalized its staff at the gun show, relying on certain employees to assist customers in choosing weapons, and a different young and inexperienced employee to complete the required ATF paperwork. Such negligent practices facilitate and contribute to the likelihood that straw purchases will occur without detection.

214. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Patriot Services' participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

215. Upon information and belief, Patriot Services continues to make straw sales and those handguns sold by Patriot Services continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Patriot Services' Contribution to the City Gun Nuisance

216. A study by the Americans for Gun Safety Foundation ("AGSF") released in January 2004, *see Selling Crime: High Crime Gun Stores Fuel Criminals* (Americans for Gun Safety Foundation, January 2004), observes that data collected from 1996 to 2000 showed Patriot Services to be on a list of 120 dealers with the highest number of guns recovered in

crimes in the nation. Patriot Services had 210 reported traces nationwide for the period between 1996 and 2000.

217. Despite its location approximately 350 miles from New York City, Patriot Services sold 50 guns recovered in crimes in New York City between March 1994 and December 2005.

218. Of the 21 handguns sold by Patriot Services that have been recovered in New York City prior to October 2001, most were seized from illegal possessors. Many guns sold by Patriot Services had already been used in connection with serious crimes before they were recovered.

219. The reported incidents involving Patriot Services guns include the following:

- In September 1996, the arrest of 4 men in possession of a Smith & Wesson handgun and a silencer in Brooklyn;
- In June 2001, the arrest of a 16-year-old boy in possession of a Lorcin .380-caliber handgun along with 16 envelopes of heroin, and some marijuana in Manhattan;
- In February 2002, the arrest of a parolee in possession of 2 .380-caliber handguns in Queens;
- In November 2001, at least 6 shots fired on the streets of Manhattan;
- In April 2002, at least 8 shots fired from a rooftop in the Bronx from a Lorcin 9mm handgun; and
- In January 1997 and February 1998, separate arrests of two 16-year-old boys found to be in possession of handguns, one of which was a Ruger 9mm.

220. Guns sold by Patriot Services were recovered in crimes in New York City in as little as 66 days after sale. The average time to crime for the 21 recovered guns traced from Patriot Services to New York City through October 2001 is 3.5 years, compared to a time to

crime for all crime guns recovered in New York City of 6 years. Seven of the guns were recovered less than 2 years after being purchased from Patriot Services, and in 3 of those cases, the guns were recovered less than 6 months after purchase.

221. Some of the guns recovered in the City sold by Patriot Services had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

222. Approximately two-thirds of the guns recovered in the City that were purchased at Patriot Services for the period from March 1994 to October 2001 were “Saturday night specials” – cheap, poorly made handguns favored by criminals, including Lorcins and Hi-Points.

Peddler’s Post

Peddler’s Post’s Participation in Straw Sales

223. Upon information and belief, Peddler’s Post is well-acquainted with straw purchases, and has intentionally or negligently participated in such sales on countless occasions.

224. A December 2000 *Dayton Daily News* series, *Ohio: The Gunrunner’s Paradise* (“*Gunrunner’s Paradise*”), reported that between October 1993 and February 1994, a college student named Brian Hancock bought 117 handguns and trafficked them as part of a gun-running ring to criminals in Michigan and Washington, D.C. Upon information and belief, the majority of those handguns, were sold to Hancock by Peddler’s Post. In 1995, Hancock pled guilty to conspiracy to make false written statements to acquire firearms. In March and April 1993, fellow college student Daniel Perkins bought 33 handguns from Peddler’s Post as a straw purchaser for traffickers.

225. According to *Gunrunner’s Paradise*, during that same 1993-1994 time period, another college student, Calvin Walker, straw purchased 53 handguns for traffickers, 50

of which were sold to him by Peddler's Post. The guns were later recovered at crime scenes in New York, Michigan, and North Carolina. Court papers show that as part of that trafficking operation, on one occasion, February 19, 1994, Walker bought 21 handguns (17 Lorcin .38-caliber pistols and 4 Hi-Point 9mm pistols) from Peddler's Post. Just days later, on February 25, 1994, he bought an additional 20 handguns (20 Lorcin .38-caliber pistols) from Peddler's Post. In April and September 1994, Walker made additional purchases of 4 and 5 guns, respectively, from Peddler's Post.

226. More recently, between approximately February 2002 and June 2004, purchasers and traffickers working as part of a gun and drug trafficking conspiracy bought approximately 60 guns in Ohio and Alabama, obliterated many of their serial numbers, and trafficked them to New York City, with most being sold at the Mott Haven housing project in the Bronx. Twenty-eight of those handguns were recovered in New York City as part of an undercover operation involving confidential informants. In addition, at least four of the remaining handguns have been recovered by law enforcement officers in the New York City area.

227. As part of the trafficking conspiracy, between June and September 2003, Noah O'Brien purchased 13 handguns from the same salesperson over 4 separate visits to Peddler's Post's Wilmington, Ohio location, inside the Caesar Creek Flea Market. The handguns that O'Brien bought were always the cheapest available, Bryco .380 caliber and Hi-Point 9mm pistols. For example, on September 1, 2003, O'Brien engaged in a multiple purchase of 3 identical Hi-Point 9mm pistols from Peddler's Post. Less than 2 weeks later, on September 14, 2003, O'Brien engaged in another multiple purchase from Peddler's Post, this time of 6 identical Hi-Point 9mm pistols.

228. O'Brien believes that, based on his conversations with the man, the Peddler's Post salesperson understood that O'Brien was purchasing the handguns for resale. O'Brien asked the salesperson whether he was required to complete paperwork to re-sell the handguns, and the salesperson told O'Brien "no" and that the paperwork from O'Brien's Peddler's Post purchases would only be kept for three months. During one purchase, in approximately August 2003, O'Brien was actually at the Peddler's Post counter and speaking to his co-conspirator Manuel Salazar by cell phone to determine what type of handgun to purchase. On another occasion, O'Brien took his co-conspirator Salazar to Peddler's Post, where Salazar bought 4 handguns.

229. As part of the same gun-trafficking operation, between late 2003 and early 2004, a straw purchaser, Jennifer Costello, made four purchases for a total of at least seventeen Hi-Point handguns for trafficker O'Brien from FFLs located in flea markets, gun shows, and pawn shops. One of those straw purchases took place at Peddler's Post's Wilmington, Ohio location. Even though, on that occasion, O'Brien accompanied Costello to the Peddler's Post counter, and stood nearby as she purchased three Hi-Point 9mm pistols, the salesperson did not raise any concerns or ask any questions beyond commenting that Costello was buying three guns but only had 2 hands. In contrast, on another occasion when Costello attempted to straw purchase multiple Hi-Points from a gun store owned by former police officers, they seemed suspicious, asked pointed questions, and refused to make the sale on that day.

230. O'Brien also used other straw purchasers to buy guns from Peddler's Post. Upon information and belief, in or around March 2004, Robert Miller bought four Hi-Point 9mm pistols from Peddler's Post for O'Brien. Similarly, Kristen Campbell straw purchased three Hi-Points 9mm pistols from Peddler's Post for O'Brien in or around April 2004.

231. Peddler's Post continues to be willing to engage in straw sales. On or about April 12, 2006, a male and a female investigator retained by the City of New York entered Peddler's Pawn's Washington Court House, Ohio store and engaged in a simulated straw purchase of a Hi-Point 9mm handgun, that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." Only the male investigator interacted with a Peddler's Post salesperson, discussing and selecting the handgun to purchase. Once the male investigator had chosen the gun and indicated a desire to purchase it, the female investigator, who had not been a part of the discussion, approached the counter to make the purchase.

232. Up to the moment of filling out the required federal documentation, the female investigator was completely uninvolved in the purchase discussions and was off elsewhere, browsing in the store. The Peddler's Post salesperson at the counter, who had shown the Hi-Point to the male investigator and answered questions about the gun, raised no objections and asked no questions when the female investigator presented her identification and filled out the federal paperwork.

233. While the female investigator completed the paperwork, the male investigator further interacted with the salesperson to review and select ammunition. Once the paperwork and background check had been completed, the salesperson accepted cash payment for the firearm from the male investigator, and handed the firearm to the male investigator. Other than completing the federal paperwork, the female investigator did not participate in the transaction in any manner, nor did she express any interest in the handgun, its capabilities, or suitable ammunition.

234. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

235. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Peddler's Post's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

236. Upon information and belief, Peddler's Post continues to make straw sales and those handguns sold by Peddler's Post continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Peddler's Post's Contribution to the City Gun Nuisance

237. Despite its location approximately 580 miles from New York City, Peddler's Post sold at least 9 guns recovered in the City. Further, according to public documents, Peddler's Post has been the source of countless handguns trafficked to the City, many of which have likely never been recovered.

238. Of the guns sold by Peddler's Post that have been recovered in New York City, most were seized from prohibited possessors. Some guns sold by Peddler's Post had already been used in connection with crimes before they were recovered, including drug offenses and burglary.

239. Guns sold by Peddler's Post were recovered almost immediately after the sale through NYPD/ATF undercover operations using confidential informants. In addition, other guns sold by Peddler's Post were recovered in New York City as early as 4 months after the sale.

240. Some of the guns recovered in the City sold by Peddler's Post had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

241. Virtually all of the handguns sold by Peddler's Post and recovered in the City, as well as those known to have been purchased from Peddler's Post and destined for the City as part of trafficking rings, were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Hi-Points, Bryco Arms, Ravens, and Lorcins.

Webb's

Webb's Participation in Straw Sales

242. Upon information and belief, Webb's has negligently or intentionally engaged in straw sales, some of which took place at gun shows.

243. Webb's continues to be willing to engage in straw sales. On or about April 21, 2006, a male and a female investigator retained by the City of New York entered Webb's Madison Heights, Virginia store and engaged in a simulated straw purchase of a .380-caliber Cobra, that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." Only the male investigator interacted with a Webb's salesperson, discussing and selecting the handgun to purchase. After the male investigator selected the gun to purchase, the female investigator approached the counter and offered to forms of identification to the salesperson. The salesperson then handed the forms to complete to the female investigator. The salesperson advised the investigators to return to the store because of a delay in getting approval of the sale due to a large volume of requests being processed at that time.

244. The male and female investigator returned to the store about two hours later, after receiving word by telephone that the sale had been approved. The investigators

entered the store, and the male investigator paid for the gun. The two investigators exited the store shortly thereafter.

245. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

246. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Webb's participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City's injury.

247. Upon information and belief, Webb's continues to make straw sales and those handguns sold by Webb's continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Webb's Contribution to the City Gun Nuisance

248. Despite its location more than 400 miles from New York City, between March 1994 and October 2001, Webb's sold 15 guns recovered in the City.

249. Some of the reported incidents involving firearms sold by Webb's include the following:

- In June 2000, three teenagers attempted to shoot a man with a Lorcin .380-caliber gun before beating and robbing him in Queens;
- In April 1998, a 23-year-old man accidentally fatally shot himself in the head in the Bronx; and
- In March 2000, a 22-year-old man in the Bronx was shot in the back when he went outside to investigate shots being fired.

250. Guns sold by Webb's were recovered in New York City as soon as 64 days after the sale. The average time to crime for the 15 recovered guns traced from Webb's to New York City is 3.6 years, compared to an average time to crime of 6 years for all crime guns recovered in New York City.

251. Some of the guns recovered in the City sold by Webb's had their serial numbers defaced at the time they were recovered. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

252. Many of the handguns sold by Webb's and recovered in the City were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Bryco Arms and Lorcins.

Woody's Pawn

Woody's Pawn Participates in Straw Sales

253. Upon information and belief, Woody's Pawn has intentionally or negligently engaged in straw sales, and is well-acquainted with straw sales. Between 1998 and 2001, Tyshawn Anthony Brown of South Carolina recruited nine straw purchasers to buy a total of 46 guns at South Carolina stores, including Woody's Pawn. The guns were then sent to New York. Fourteen of these guns were recovered in connection with crimes in the City. In August 2003, Brown and the straw purchasers were indicted in United States District Court for the District of South Carolina and all eventually pled guilty.

254. Upon information and belief, Woody's Pawn is well aware that it is patronized by straw purchasers. A Woody's employee has been quoted as saying that "he was not surprised that [Woody's Pawn] was the third-ranking active dealer [on a list of dealers with high numbers of guns traced to the City]." "You got some people that come from up north and get South Carolina ID. They may come down here and buy a gun and sell it to someone else."

See New York Dealers Are Prominent on Court Case's List of Guns Tied to Crime, New York Times, April 18, 2003, Sec. D at 2.

255. Woody's Pawn continues to willingly engage in straw sales. On April 19, 2006, a male and a female investigator went into Woody's Pawn in Orangeburg, South Carolina, and engaged in a simulated straw purchase that displayed all of the observable, in-store characteristics of the straw purchases described above (*supra*, at ¶¶ 56-59), without any subsequent transfer of the gun by the "straw purchaser." The male investigator interacted with the salesperson at Woody's Pawn for several minutes, discussing and selecting a 9mm handgun to purchase. The male investigator looked at a Hi Point handgun and inquired about the difference between that gun and a similar model Taurus gun, and decided to purchase the Hi Point and two boxes of ammunition.

256. After the male investigator decided on the purchase, only then was the female summoned to the counter to participate in the transaction. When the male investigator indicated to the salesperson that "she's going to fill out the paperwork," the salesperson stated "you came in here asking about the gun, and now she fills out the paperwork – I can't do that." The salesperson then called another Woody's Pawn salesperson over to the counter, and explained the situation and the second salesperson concurred. The male investigator confirmed with the store personnel that all the female investigator had to do was come back another day. Both the male and female investigator then left the store.

257. Approximately an hour-and-a-half later, the female investigator returned to the store alone. The salesperson remembered that she had been in earlier, and the investigator stated that she wanted the weapon. After filling out the federal paperwork, without prompting, the salesperson walked over to the counter and pointed to the gun that the male investigator had

chosen earlier. The female investigator said “yes.” The salesperson then offered her ammunition. Upon her assent, he chose some without asking what type and gave it to her. The female investigator paid and left the store, with no further questions asked.

258. Other gun dealers in the States of Georgia, South Carolina, Virginia, Ohio and Pennsylvania, unequivocally identified the virtually identical scenario, at times staged by the same investigators, as an attempted straw purchase. Some of those dealers refused to go through with the sales, even informing the investigators that these sales would be illegal.

259. Although there has been no transfer of the gun by the straw purchaser necessary for an actual straw sale, Woody’s Pawn’s participation in the simulated straw sale violates Sections 922, 923, 924 and 1001 of Title 18 of the U.S. Code and that violation is a proximate cause of the City’s injury.

260. Upon information and belief, Woody’s Pawn continues to make straw sales and those handguns sold by Woody’s Pawn continue to be recovered in New York City from persons prohibited from possessing them and in connection with violent crimes.

Woody’s Pawn’s Contribution to the City Gun Nuisance

261. Despite its location approximately 700 miles from New York City, between March 1994 and October 2001, Woody’s Pawn sold 98 guns recovered in the City.

262. Of the 98 guns sold by Woody’s Pawn that have been recovered in New York City, most were seized from prohibited possessors. Many guns sold by Woody’s Pawn had already been used in connection with serious crimes before they were recovered, including homicide, rape, robbery, burglary and assault.

263. The reported incidents involving guns purchased at Woody’s Pawn include the following:

- In the midst of an argument on a Brooklyn street in July 1996, a man went home, retrieved a .32-caliber handgun, returned to the person he was arguing with, and fired a shot into the air;
- In August 1996, police executing a search warrant in Manhattan found an Uzi, a .38-caliber revolver and a .40-caliber revolver, five bundles of what appeared to be crack and 24 bags of marijuana. One of the five suspects was a 14-year-old boy;
- In August 1996 in Brooklyn, a 19-year-old man put a .38 caliber gun to the temple of a 17-year-old girl who was four months pregnant with his child;
- In February 1997 in the Bronx, a 15-year-old boy was found with a 9mm gun and 3 envelopes of what appeared to be heroin;
- In October 1997, a man was killed by a single gunshot to the chest in Brooklyn;
- In January 1998, a police officer saw a 17-year-old boy with a gun in his waistband. The boy fled into his apartment, where police arrested him and found a 9mm gun and crack;
- In July 1998, a person was found dead on the living room floor of a Manhattan apartment, with an apparent gunshot wound to the head;
- In October 1998, in a Brooklyn apartment, a man punched and kicked a woman in the head and threatened to shoot her with a 9mm handgun;
- In March 1999, on a Brooklyn street, two boys, ages 13 and 15, were found with a loaded 9mm handgun;
- In August 1999, in Brooklyn, transit police stopped a man entering a subway turnstile with a 9mm gun in his backpack;
- In September 1999, in Brooklyn, a 17-year-old boy was found with a loaded 9mm handgun;
- In September 1999, in Brooklyn, a 19-year-old girl walked up to a 17-year-old girl, punched her in the head, and threatened her with a .25-caliber handgun;
- In October 1999, a man punched his girlfriend in the face and pointed a semi-automatic pistol at her, telling her, "I'm gonna kill you.";

- In November 1999, a vehicle stop in Manhattan of 16-year-old, 21-year-old and 22-year-old turned up a .22-caliber revolver;
- In May 2000, a woman in Queens heard a shot fired behind her building. When police approached her downstairs neighbor, they found him with a loaded 9mm gun. The woman said that the neighbor “shot a gun on numerous occasions.”;
- In August 2000, a man opening his check-cashing store in Brooklyn was approached by a man with a .45-caliber gun and told to go inside and open the safe. The suspect said, “You know what I want. If someone comes I’m going to shoot you.”;
- In September 2000, a man in the Bronx was shot “possibly twice.” The suspects were two 16-year-old boys and a 21-year-old man;
- In January 2001, a police officer in Brooklyn shot to death a 31-year-old who had a Hi-Point 9mm gun;
- In February 2001 in a Queens building, a man fired a 9mm gun into a floor and through the ceiling of an 80-year-old man’s apartment;
- In July 2001 in the Bronx, a 17-year-old boy fled police trying to arrest him for having an open beer. As he ran, he threw a 9mm handgun. When he was arrested, police also found five bags of crack; and
- In November 2001 in Brooklyn, police found a 31-year-old man lying dead in front of a building with multiple gun shot wounds.

264. Guns sold by Woody’s Pawn were recovered in New York City as soon as 3 days after sale; others have been recovered in the City less than one month after purchase in South Carolina. The average time to crime for the 98 recovered guns purchased at Woody’s Pawn and recovered in the City is 2.9 years, compared to a time to crime of 6 years for all crime guns recovered in New York City.

265. The serial numbers of many of the guns sold by Woody’s Pawn recovered in the City were defaced. ATF has reported that a defaced or obliterated serial number is an indication that a gun may have been trafficked.

266. The overwhelming majority of guns recovered in the City purchased at Woody's Pawn were "Saturday night specials" – cheap, poorly made handguns favored by criminals, including Lorcins and Hi-Points.

Defendants Know or Should Know That Their Guns Are Trafficked

267. Defendants know or should know when a gun they have sold has been recovered in a crime, because for many such guns, Defendants are contacted by ATF asking for the particulars of the sale. For example, a Woody's Pawn employee, noting the large number of crime guns sold by Woody's Pawn, stated that ATF "calls down here for a gun trace probably twice a day." Contact from the ATF is a direct indication to Defendants that a gun that they have sold was very likely recovered in a crime.

268. Defendants know or should know that straw purchasers are likely to attempt to purchase handguns from Defendants. Upon information and belief, Defendants have each received the *Don't Lie For the Other Guy* pamphlet (*supra*, ¶¶ 56-58) described above, and have received other training and informational materials from ATF concerning straw purchases.

269. The simulated straw transactions described above had many of the hallmarks of the straw purchases as described in *Don't Lie for the Other Guy*. Indeed, a videotaped presentation by ATF in connection with the *Don't Lie for the Other Guy* program presented to gun dealers flatly states that, to prevent the diversion of firearms into the illegal market, dealers should follow the principle that if one person fills out the paperwork to purchase a firearm, then that person should be paying for the firearm. The same presentation emphasizes that, where indicators of potential straw purchases are present in a transaction, common sense says that dealers should ask additional questions to ensure that the person buying the firearm is the actual purchaser. National Shooting Sports Foundation videotape, *Identifying and Deterring Straw Purchasers*.

270. Despite the receipt of materials on straw purchases, Defendants have intentionally or negligently failed to instruct their employees to recognize the obvious indicators of a straw purchase.

**FIRST CAUSE OF ACTION:
PUBLIC NUISANCE**

271. The City realleges paragraphs 1 to 270 as if fully set forth herein.

272. Under New York law, any unlawfully possessed, transported or disposed of gun is declared to be a nuisance. N.Y. Penal Law § 400.05(1).

273. Defendants' unlawful sales practices enable the easy acquisition of handguns by persons prohibited by law from possessing firearms by reason of criminal history, age, mental infirmity, and/or lack of a license.

274. Defendants, through their unlawful sales practices, acts and omissions and violation of N.Y. Penal Law § 400.05(1), have knowingly and/or recklessly created, contributed to and helped to maintain an existing and continuing public nuisance of long-standing that unreasonably and substantially: interferes with rights common to the general public; deprives City residents and visitors of the peaceful use of public streets, sidewalks, parks, and other public places; interferes with commerce, travel and the quality of daily life; and endangers the health, welfare, peace, safety, well-being, convenience and property of considerable numbers of residents of, and visitors to, New York City. This public nuisance constitutes an injury in fact to the City that is concrete and particularized, actual and imminent, and that is caused and/or contributed to by Defendants' acts and omissions.

275. There are reasonable steps that Defendants could take to reduce or eliminate their contribution to this public nuisance. The cost of the steps that Defendants could

take to reduce their contribution to the public nuisance are minuscule compared to the costs of the harm that would be avoided.

276. The City has incurred substantial costs in attempting to abate or abating the public nuisance caused, or contributed to, by Defendants, including, but not limited to the costs of disarming illegal gun possessors and responding to crimes committed by such persons.

277. The City is entitled to recover its costs of attempting to abate and/or abating this public nuisance.

278. The City, its residents and its visitors are being irreparably harmed by this public nuisance.

279. The City is entitled to injunctive relief to abate this nuisance.

**SECOND CAUSE OF ACTION:
STATUTORY NUISANCE**

280. The City realleges paragraphs 1 to 270 as if fully set forth herein.

281. Defendants' conduct violates New York Penal Law § 240.45, Criminal Nuisance in the Second Degree, because Defendants' conduct is either unlawful in itself or unreasonable under all the circumstances, and Defendants have knowingly or recklessly created or maintained a condition that endangers the safety or health of a considerable number of persons.

282. Defendants, through their violation of N.Y. Penal Law § 240.45, have knowingly and/or recklessly created, contributed to and helped to maintain an existing and continuing public nuisance of long-standing that unreasonably and substantially: interferes with rights common to the general public; deprives City residents and visitors of the peaceful use of public streets, sidewalks, parks, and other public places; interferes with commerce, travel and the quality of daily life; and endangers the health, welfare, peace, safety, well-being, convenience

and property of considerable numbers of residents of, and visitors to, New York City. This public nuisance constitutes an injury in fact to the City that is concrete and particularized, actual and imminent, and that is caused and/or contributed to by Defendants' acts and omissions.

283. There are reasonable steps that Defendants could take to reduce or eliminate their contribution to this public nuisance. The cost of the steps that Defendants could take to reduce their contribution to the public nuisance are minuscule compared to the costs of the harm that would be avoided.

284. The City has incurred substantial costs in attempting to abate and/or abating the public nuisance caused or contributed to by Defendants, specifically including, but not limited to, the costs of disarming illegal gun possessors and responding to crimes committed by such persons.

285. The City is entitled to recover its costs of attempting to abate and/or abating the nuisance.

286. The City, its residents and its visitors are being irreparably harmed by this public nuisance.

287. The City is entitled to injunctive relief to abate this nuisance.

**THIRD CAUSE OF ACTION:
NEGLIGENCE *PER SE***

288. The City realleges paragraphs 1 to 270 as if fully set forth herein.

289. Defendants' conduct as alleged herein, including their violation of New York Penal Law § 240.45, is a direct and proximate cause of injury to the City of New York and constitutes negligence *per se*.

290. The City is within the class of persons the law was intended to protect.

291. The City has been damaged by this negligence *per se* in an amount including, but not limited to, the costs of disarming illegal gun possessors and responding to crimes committed by such persons.

292. The City is also entitled to recover punitive damages from Defendants because the acts and omissions of Defendants alleged herein are morally reprehensible, wanton, malicious, and oppressive, and are based on a lack of concern towards the City, its residents and its visitors.

**FOURTH CAUSE OF ACTION:
NEGLIGENCE**

293. The City realleges paragraphs 1 to 270 as if fully set forth herein.

294. Defendants have and had a duty to exercise reasonable care in selling guns and a duty to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others or failing to take reasonable steps to reduce reasonably foreseeable risks of injury to others.

295. Defendants breached their duty of reasonable care by negligently selling guns in straw sales.

296. It was reasonably foreseeable to Defendants that the City, its residents and its visitors would be injured as a result of Defendants engaging in straw sales.

297. Defendants' breach of their duty of reasonable care was a direct, legal, and proximate cause of, and substantial factor in causing, injury to the City, its residents and its visitors.

298. The City has been damaged by Defendants' negligence in an amount including, but not limited to, the costs of disarming illegal gun possessors and responding to crimes committed by such persons.

299. The City is also entitled to recover punitive damages from Defendants because the acts and omissions of Defendants alleged herein are morally reprehensible, wanton, malicious, and oppressive, and are based on a lack of concern towards the City, its residents and its visitors.

**FIFTH CAUSE OF ACTION:
NEGLIGENT ENTRUSTMENT**

300. The City realleges paragraphs 1 to 270 as if fully set forth herein.

301. By engaging in straw sales, Defendants negligently permitted individuals to acquire possession of handguns whom they knew, or should have known, were not legally entitled to obtain those guns.

302. Defendants knew or should have known that some such individuals not legally entitled to obtain those guns would use those guns in a manner that would create an unreasonable risk of harm to others. Defendants expected or should have expected those others to be endangered.

303. The handguns Defendants sold to customers in straw sales were under the control of Defendants at the time they negligently permitted those straw purchasers to acquire possession.

304. Individuals who purchased guns from Defendants in straw sales became entitled to possess and use those guns only by Defendants' consent, and those individuals became entitled to possess and use those guns only by Defendants' negligent or intentional acts.

305. Defendants knew or should have known that, by refusing to engage in straw sales they could prevent such customers from possessing or using those handguns illegally.

306. It was reasonably foreseeable to Defendants, and they knew or had reason to know based on the circumstances surrounding such sales and prior notice to Defendants, that

not all of their customers buy handguns solely for their personal use, and that many transfer such handguns to persons prohibited by law from possessing them.

307. Subsequent criminal use of a handgun acquired in a straw sale was and is a reasonably foreseeable consequence of engaging in straw sales.

308. Defendants' negligent provision of handguns to customers through straw sales was a direct, legal, and proximate cause of, and substantial factor in causing injury to, the City, its residents and its visitors.

309. The City has been damaged by this negligent entrustment in an amount including, but not limited to, the costs of disarming illegal gun possessors and responding to crimes committed by such persons.

310. The City is also entitled to recover punitive damages from Defendants because the acts and omissions of Defendants alleged herein are morally reprehensible, wanton, malicious, and oppressive, and are based on a lack of concern towards the City, its residents and its visitors.

WHEREFORE, the City respectfully prays that the Court grant judgment against the Defendants as follows:

- a) issue an injunction abating the public nuisance complained of herein by
 - i) Ordering each Defendant to submit to supervision by a court-appointed Special Master(s) the responsibilities of whom shall include, *inter alia*, the monitoring of each Defendant's sales practices through in-store observation, records monitoring and random and repeated integrity-testing, the costs of such Special Master(s) to be borne by each such Defendant;
 - ii) Ordering each Defendant to comply with federal, state and local laws related to the sale of guns, including ceasing to engage in straw sales;
 - iii) Ordering each Defendant to require mandatory training of all sales personnel by a court-approved training entity, the costs of such training to be borne by each such Defendant;
 - iv) Ordering each Defendant to post a bond in an amount to be determined by the Court, which in the event of future violations by a Defendant, shall be forfeited to the City to cover abatement costs attributable to that Defendant's future violations;
- b) award the City its costs incurred in abating the nuisance;
- c) award the City compensatory and punitive damages in amounts to be determined at trial;
- c) award reasonable counsel fees and costs; and

d) award such other and further relief as the Court may deem just and proper.

Dated: New York, New York
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